

**Remarks**

This Application has been carefully reviewed in light of the Office Action mailed September 28, 2004 containing a restriction requirement. Applicants provisionally elect with traverse to prosecute Claims 1-10 and 25 (Group I). Applicants understand that the Examiner will examine Claims 26-29, which the Examiner classifies as linking claims, with the elected Group I. Applicants have withdrawn Claims 11-24 without prejudice or disclaimer; however, Applicants respectfully request that if the Examiner withdraws the restriction with respect to any non-elected claims, the Examiner reinstate and examine those claims. Applicants respectfully request reconsideration of at least portions of the restriction requirement in view of the following remarks.

**I. The Restriction Requirement**

The Examiner requires restriction to one of the following groups:

- Group I Claims 1-10 and 25 drawn to a system, classified in class 705, subclass 21;
- Group II Claims 11-14 drawn to a marketplace, classified in class 705, subclass 26;  
and
- Group III Claims 15-24 drawn to a method of managing, classified in class 705, subclass 8.

Applicants respectfully traverse the restriction requirement. There are two criteria for a proper requirement for restriction between patentably distinct inventions: (1) the inventions must be independent or distinct as claimed; and (2) there must be a serious burden on the Examiner if restriction is not required. M.P.E.P. § 803. Applicant respectfully submits that these two criteria have not been satisfied with respect to at least Groups I and III. Applicants discuss these two groups below.

**II. Groups I and III Should be Examined in a Single Application**

First, Applicants respectfully submit that the inventions in Groups I and III are neither independent nor distinct. The term "independent" means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect. M.P.E.P. § 802.01. The claims of Groups I and III clearly recite substantially similar limitations. Also, the Specification discloses relationships among the subjects of Groups I and III. (*See, e.g.*, Page 8, Line 1 through Page 9, Line 3; Page 11, Line

25 through Page 13, Line 6). Thus, the inventions are not independent. The term "distinct" means that two or more subjects as disclosed are related, but are capable of separate manufacture, use, or sale as claimed, and are patentable, that is, novel and unobvious, over each other. M.P.E.P. § 802.01. The claims of Groups I and III clearly recite substantially similar limitations. Applicants respectfully submit that the Examiner would not consider the claims of either of Groups I and III to be novel and unobvious over the other. By example, if a prior art reference disclosed the subject matter of Claim 1 of Group I in its entirety, Applicants respectfully submit that the Examiner would not consider Claim 15 or Claim 24 of Group III novel and unobvious over that reference. Thus, the inventions are not distinct.

Second, Applicants respectfully submit that the search and examination of the Application may be made without serious burden on the Examiner since the claims of at least Groups I and III clearly recite substantially similar limitations. "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." M.P.E.P. § 803.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the restriction requirement with respect to at least Groups I and III. Applicants reserve the right to petition the restriction requirement if the restriction requirement is made final.

### **III. Claims 26-29 will be Examined with the Provisionally-Elected Claims**

The Examiner indicates that Claims 26-29 link the Examiner's Groups I-III and that the "linking claims will be examined with the elected invention." (Office Action, Page 3) Although Applicants do not necessarily agree with or acquiesce to the Examiner's classification of Claims 26-29 as linking claims, Applicants understand that the Examiner will examine these claims with the provisionally-elected claims.

### **IV. No Waiver**

All of Applicants' remarks are without prejudice or disclaimer. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner's additional statements.

**Conclusion**

Applicants believe this case is in condition for allowance. For at least the foregoing reasons, Applicants respectfully request early and favorable action in this case, including the full allowance of all pending claims.

If the Examiner believes a telephone conference would advance prosecution of this case in any way, the Examiner is invited to contact Christopher W. Kennerly, the Attorney for Applicants, at the Examiner's convenience at (214) 953-6812.

Applicants believe that no fees are due. However, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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Customer Number

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